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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALLAN L. SAMSON and MICHAEL KEILTY

Appeal 2007-2617
Application 09/489,864
Technology Center 2400

Decided: January 14, 2009

Before JOSEPH L. DIXON, ALLEN R. MACDONALD, and
JEAN R. HOMERE, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on Appellants' Request for Rehearing, filed Dec. 16, 2008, of our Decision under 35 U.S.C. § 134, mailed Oct. 30, 2008, affirming the Examiner's final rejection of claims to 1-44. We have jurisdiction under 35 U.S.C. § 6(b).

We Grant the Request for Rehearing, but Decline to Modify our Decision.

STATEMENT OF THE CASE

Appellants' invention relates to a system for preventing tampering with a signal conditioner/sensor remote from a host system using authentication information from the signal conditioning circuitry. (Spec. 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A system for preventing-tampering with signal conditioning circuitry in electronics that determines a parameter from signals received from sensors, said system comprising:

a host system that receives data from and sends data to said signal conditioning circuitry;

a processing unit in said host system;

a memory connected to said processing unit;

instructions for directing said processing unit in said host system to periodically transmit a request for authentication information from said signal conditioning circuitry, receive said authentication information from said signal conditioning circuitry in response to said request, comparing said authentication information with initial information, and signal a tampering condition in the signal conditioning circuitry in response to said authentication information not being equal to said initial information; and

a media readable by said processing unit for storing said instructions.

As an initial observation, we note that Appellants are very loose with their assertions of express support for their claim terminology and Appellants are then rather specific and limiting with their correlation to the teachings of Lumsden and still do not consistently use the express language of independent claim 1.

With respect to asserted error (A), Appellants maintain that " 'authentication information' is information that can change, but is not authorized to be changed by others, except by the manufacturer or agents there of (see page 2-lines 15-22 and lines 28-33 of Specification)." From our review of the cited material, we find no corresponding express definition of "authentication information" as Appellants imply. At page 2 of the Specification, we find the discussion of prior art systems where manufacturers attempted to prevent tampering, but we find no express definition of what "tampering" is defined to be in the instant Specification. Furthermore, the Specification at lines 19-20 of page 3 state "[f]or purposes of this discussion, identification, calibration and configuration data are termed authentication data." Here, we find no express definition of authentication data. The asserted text merely sets forth three types of data which fall within the realm of "authentication data," and does not set forth a closed statement of data which would be considered "authentication data." Additionally, it is unclear whether all three data types are required for data to be authentication data or if individually each one is considered a separate type of authentication data in an extended list of types of data. Therefore, we cannot agree with Appellants that the "Specification clearly defines authentication data."

Appellants maintain that Lumsden does not disclose calibration and configuration data. We find Appellants' argument is not commensurate in scope with the express language of independent claim 1. Therefore, Appellants' argument (A) is not persuasive to identify where we erred in a point which we misapprehended or overlooked in our Decision.

With respect to Appellants' argument (B), Appellants assert that the Board misapprehended the definitions in the text of the application. Appellants contend that "tampering", "authentication process", and "resulting signaling" are all "clearly outlined in the patent application." (Req. 4). Here, our Decision stated that the Specification did not include express definitions of terms and Appellants' argument does not point out any "express definitions" and merely asserts that they are clearly "outlined" in the patent Specification. We find that an express definition and an "outline" are not the same thing. Therefore, Appellants' generalized argument does not identify a point which we misapprehended or overlooked in our Decision sustaining the rejection of independent claim 1.

Appellants further argue that Lumsden does not disclose "an authorization process." We note that the language of independent claim 1 does not recite "an authorization process." (Req. 4). Therefore, Appellants' generalized argument does not identify a point which we misapprehended or overlooked by the Board in our Decision.

Again, Appellants maintain that "[t]ampering is clearly outlined in the patent application" (Req. 4), but Appellants have not identified any express definition for the claim terminology. Appellants' strained reading of the application's Specification at pages 4-5 of the Request does not specifically

identify a point that the Board misapprehended or overlooked in our Decision. Furthermore, Appellants maintain that the "process of signaling a tampering condition is clearly outlined in the patent application." (Req. 5). Again, Appellants' argument is not commensurate in scope with the express language of independent claim 1 wherein the claim does not set forth a process of signaling, but rather "instructions for... and signal" With regards to Appellants' argument that Lumsden does not discuss processing or handling in error condition "signaling a tampering condition" (Req. 5), this argument is not commensurate in scope with the language of independent claim 1. Appellants appear to be arguing the desired language of the claims as intended to be modified in the After Final amendment, dated June 24, 2004, which was denied entry by the Examiner. Therefore, Appellants' generalized argument does not identify a point which was misapprehended or overlooked by the Board in our Decision.

With respect to asserted error (C), Appellants maintain that the Board misapprehended or overlooked the point in equating signal quality in communications to be tampering or error detection. (Req. 6). Appellants' maintain that Lumsden does not teach or suggest not processing received data as asserted by the Board. We disagree with Appellants.

At page 8 of the Decision, we identify the discussion in Lumsden at columns 2-3 which discusses the use of identification codes for each transponder and the use in the system. Specifically, in column 2 lines 50-53 with regards to the transponder receiving an instruction word and accept the instruction word set "if and only if the identification and words coincide." While Lumsden does not specifically discuss the receipt by the central

computer, it would be illogical that the central computer would accept data and process it from transponders which do not exist in its system. These transponders that do not exist would be those that do not have appropriate identification codes which are those that have been tampered with. This would be data which would have harmful results to the system. Therefore, we do not find that Appellants have identified a point misapprehended or overlooked by the Board in argument (C).

With respect to asserted error (D), Appellants' arguments are based upon the position that transponder identification/identifier of Lumsden is not authentication data, as in the present claims. (Req. 7). As discussed above, we do not agree with Appellants' distinction and find that Appellants do not identify a point misapprehended or overlooked by the Board. Again, Appellants argue that Lumsden does not teach or suggest that the central computer performs "error detection using the transponder identifier" (Req. 7), but the language of independent claim 1 does not recite "error detection." Therefore, we do not find that Appellants have identified a point misapprehended or overlooked by the Board in argument (D).

Appellants again reiterate that the transponder identifier of Lumsden is not authentication data (Req. 7), but Appellants provided no convincing line of reasoning or express support in Appellants' Specification to support this conclusion. Therefore, we do not find that Appellants have identified a point misapprehended or overlooked by the Board in argument (D).

Appellants argue that it is known in the art to use message identifiers and addresses in order to detect transmission errors, but not errors in the data due to tampering that may have occurred before transmission. (Req. 7-8).

Appellants further acknowledge that we did not correct the Examiner's assertion that transponder identifier being equivalent to the authentication information and the Board appeared to be signaling implicit agreement with the Examiner. (Req. 8). Appellants are correct that we found the transponder identifier to be equivalent to authentication information, and we did not discuss load shedding since that level of detail is not needed to meet the language of independent claim 1. Therefore, we do not find that Appellants have identified a point misapprehended or overlooked by the Board in argument (D).

With respect to asserted error (E), again Appellants maintain that the transponder identification of Lumsden is not being used to detect tampering. (Req. 9). Appellants assert that the Board's Decision erroneously assumes five points at page 9 of the Request. We disagree with Appellants, as discussed above and in our Decision. Here, Appellants' arguments go beyond the express language of independent claim 1 since tampering does not have to "generate erroneous measurements". Appellants further argue that Lumsden does not discuss any actions taken, or signals generated, if they receive transponder identifier fails a comparison in the central computer. (Req. 9). Here, Appellants' arguments go beyond the express language of independent claim 1 since independent claim 1 merely recites instructions to "signal a tampering condition in the signal conditioning circuitry in response to said authentication information not being equal to said initial information" without further detail recited therein. Therefore, we find that Appellants have not identified a point misapprehended or

overlooked by the Board in argument (E). Appellants further argue that the Examiner's Answer contains inconsistencies. This does not identify any point misapprehended or overlooked in our Decision.

With respect to asserted error (F), Appellants argue that Lumsden does not disclose detecting or processing an error. (Req. 10). Again Appellants seem to be arguing the language of unentered After Final amendment which set forth detecting tampering and signaling an error condition. Here, Appellants' argument is not commensurate in scope with the express language of independent claim 1. At page 11 of the Request Appellants argue that Lumsden does not discuss or even suggest any action to be taken if the comparison does not produce a match, such as where the received transponder identifier is unknown.

Appellants opine that the result of no match is that a received message with an unknown transponder (or format unknown to central computer) would merely be ignored by the central computer. (Req. 10). We agree with Appellants, but find that in a computer environment, to ignore the data would require an instruction/signal/flag. We found this would meet the language of independent claim 1. Therefore, we do not find that Appellants have identified a point misapprehended or overlooked by the Board in argument (E).

CONCLUSION

In summary, we sustained the rejection of claims 1-3, 8, 9, 34-36, 41, and 43 under 35 U.S.C. § 102; and we sustained the rejection of claims 4-7, 10-33¹, 37-40, 42, and 44 under 35 U.S.C. § 103(a) in our Decision, and Appellants have not identified any point that we misapprehended or overlooked in our Decision.

We Grant the Request for Rehearing, but Decline to Modify our Decision

DENIED

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¹ We note that the Decision merely recited the groupings of claims as Appellants listed claims in their headings in the Brief, but all the claims 10-33 stood or fell together since separate arguments for patentability were not set forth in the Brief.